GREATER UPSTATE LAW
37 CLINTON AVE N
ROCHESTER NY 14604

New York Law Journal
SERVING THE BENCH AND BAR SINCE 1888

Today's Classified Section Begins on Page 10

LUME 209—NO. 70 NEW YORK, WEDNESDAY, APRIL 14, 1993 PRICE $2.50

©1993 New York Law Publishing Co.

TODAY'S NEWS

Update

rrank, Harris, Shriver & Ja- has hired Diane E. Burkley, y deputy executive director J.S. Pension Benefit Guaran- ., as a partner. Ms. Burkley rk out of both the New York ıshington, D.C. offices han- nployee benefits and corpo- structuring matters. During r-year tenure with the feder- cy, she was the chief negoti- multimillion-dollar pension ınding claims. In an unrelat- ıonnel move, First Investors the New York investment s firm, has appointed as counsel Larry R. Lavoie, y a partner at Kirkpatrick & rt in Washington, D.C.

◆

ılk County judge had ruled ıtie Beers's godmother is a ıtranger" and cannot obtain of the 10-year-old girl who lnapped last year and held ınderground bunker for 16 'amily Court Judge James ıyle ruled Monday that the her, Linda Inghilleri, was a former caretaker of the The girl is currently in the of County Social Services nent.

◆

l criminal charges against y Clark Clifford and his law r, Robert Altman, in the ıse were dismissed yester- Washington, D.C. U.S. Dis- dge Joyce Hens Green, at ıuest of both sides, dis- the charges without preju- their being revived later. stice Department said the al was sought because Mr. is currently on trial on state in Manhattan, which is ex- to last for months. Mr. Clif- ıd quadruple bypass heart

Retired Chief Justice Warren E. Burger said yesterday that "shyster" lawyers have taken the legal profession's standing to "its lowest ebb in the history of our country." In a speech at the University of Tennessee in Knoxville, Justice Burger criticized some prosecutors for going on an "ego trip" and "trying their cases on the courthouse steps." He accused private attorneys of engaging in "huckster advertising."

◆

A gag order in the World Trade Center bombing case remained intact yesterday after defense lawyers asked a federal judge and an appellate court to lift or stay it. Southern District Judge Kevin Thomas Duffy clarified his order in the afternoon but denied a bid for a stay during an arraignment yesterday of Bilal Alkaisi, a fifth man charged in the Feb. 26 bombing. A Second Circuit panel, meanwhile, ordered an expedited appeal of the gag order but set no hearing date.

◆

Rochester lost a court suit this week to block the city's newspapers from publishing the names of persons who have been issued marriage licenses. Monroe County Supreme Court Justice Francis A. Affronti rejected the city's claim that publication of the names beginning next week would be an invasion of privacy.

◆

A former Brooklyn gynecologist whose medical license was revoked in 1986 for performing unnecessary abortions has been charged with performing illegal abortions. The Attorney General's office said Maxen Samuel, 43, pleaded innocent to charges Mon-

Ban on 'Crazy Horse' Name Struck

Fed'l Law Applied to Malt Liquor Ruled First Amendment Violation

BY DANIEL WISE

A FEDERAL LAW BARRING the use of the name Crazy Horse for alcoholic beverages violates the First Amendment protection of free speech, a U.S. judge in the Eastern District of New York has ruled.

Judge Carol B. Amon in Brooklyn agreed with the challenger, the Brooklyn-based manufacturer of "Original Crazy Horse Malt Liquor," that the statute did not sufficiently promote a legitimate state interest to pass muster under the First Amendent.

The manufacturer, Hornell Brewing Co., named its new malt liquor after the name of a famed Oglala Sioux chief who led Native American forces at the battle of Little Big Horn and resisted subjugation by U.S. forces until he was kidnapped and killed by the army. Crazy Horse also urged his people not to drink alcoholic beverages.

When the Brooklyn manufacturer first unveiled its new product in the spring of 1992, the use of the name Crazy Horse touched off a storm of protest. Several U.S. representatives and senators, as well as the U.S. Surgeon General attacked the use of the name as demeaning to Native Americans.

In the wake of the protest, Congress attached a rider to the Treasury Department appropriation bill barring the use of the name Crazy Horse on the label of any alcoholic beverage. The proviso was signed into law in the fall of 1992.

A month later, Hornell sought protection from the U.S.

Continued on page 3, column 4

CRAZY HORSE
CRAZY HORSE
DAKOTA HILLS LTD
PRODUCT OF AMERICA

Judge Carol Amon held that the ban on the 'Crazy Horse' name could not be justified when 'all other potentially appealing names of revered and important Native American icons, such as Sitting Bull and Big Foot' may be used to sell alcoholic beverages.

Unusual Dissent Marks Denial of In Banc

BY DEBORAH PINES

IN A RARE PUBLIC dissent from a behind-the-scenes vote, a federal appeals court judge expressed disappointment that his Second Circuit colleagues refused to rehear a case which could clarify the use of acquitted conduct in federal sentences.

Judge Jon O. Newman described as a missed opportunity the refusal by the U.S. Court of Appeals for the Second Circuit to rehear in banc *United* months to 20 years on the basis of acquitted conduct.

"I regret that my colleagues do not consider this extraordinary outcome to be an appropriate occasion to reconsider our case law concerning the permissible uses of acquitted conduct at sentencing," Judge Newman wrote in a published dissent.

In banc hearings, which occur about once or twice a year, gather all 13 active Second Circuit judges to review significant legal questions or set- of times in the past five years.

In his dissent, Judge Newman reported that he had requested a vote on rehearing the case of Nelson Frias. But he did not reveal if any other judges wanted the case reheard. None signed on to his public dissent, issued on March 25.

The request for rehearing followed a ruling in January by a unanimous Second Circuit panel, which included Judge Newman and which ordered Mr. Frias resentenced. The majority

Rochester Gay Rights Group Wins Judgment

Property Tax Exemption Held Improperly Denied

BY MARTIN FOX

A GAY RIGHTS group won a declaratory judgment last week against the City of Rochester for a property tax exemption for its community center after a state judge ruled the city had discriminated against the group because of its "membership and focus."

The decision, one of the first of its kind directed against a governmental body, also found Rochester violated federal equal protection rights in denying the exemption to the Gay Alliance of Genesee Valley by maintaining it was an advocacy group, thereby failing to qualify as an educational organization under Real Property Tax Law §420-a.

The decision will be published tomorrow.

Monroe County Supreme Court Justice Andrew V. Siracuse wrote, "There is only one reasonable explanation for the [City] Assessor's denial of the GAGV application: That GAGV was denied a tax exemption because the Assessor (and the city) saw support, education and advocacy for the gay and lesbian community in a different light than it did support, education and advocacy" for other residents and community groups.

"Thus, the GAGV's application received discriminatory treatment on

Continued on page 2, column 3

IN BRIEF

Decisions of Interest

The following decisions of special interest are published today under the court indicated in the text.

aw Journal

' the First and Second

by the Appellate Divisions,
ond Departments, pursuant to
nferred on them by Section
of the Judiciary Law.

y the U.S. District Court as a
f general circulation for the
f legal notices in civil and ad-
's.

' the Court of Appeals pursu-
VI, Section 28(b) of the State

the New York Law Publishing
Eighth Avenue, New York,
bany address: 17 Elk Street,
12207. Divisional officers:

elstein—President.

art—Vice-President.

oman—Vice President/

-Secretary.

aels—Production Manager.

' except Saturdays, Sundays
lays.

•

CRIPTION RATES

dvance)	$420.00
advance)	$225.00
(in advance)	$140.00
advance)	$55.00

Law Journal (ISSN 0028-
020) is published daily ex-
Sundays and legal holidays
k Law Publishing Co., 111
New York, N.Y. 10011. Sec-
ge paid at New York, N.Y
nailing offices. POSTMAS-
ess changes to The New

Rochester Gay Rights Group Wins Ruling

Continued from page 1, column 6

the basis of the character of its membership and the content of its speech, clear denials of its constitutional right," he ruled in *Gay Alliance v. City Assessor.*

The city was handed two other setbacks. It was held liable for attorney's fees under 42 USC §1983, the civil rights law, and faces sanctions for its "clearly frivolous" efforts in bringing "last-minute discovery demands" after earlier stating it had no need for additional discovery.

The court said it was "hard to escape the suspicion that the demands were made in order to harass and prejudice the Alliance and to delay the resolution of this case."

The dispute over the property tax began in 1990 when the Gay Alliance purchased a headquarters building and filed for a statutory exemption on the basis its work was educational. The group cited its incorporation as a nonprofit organization whose purposes included "the eradication of homophobia, the delivery of unbiased health care, employment protection, social integration [and] full legal rights and protection."

Educational Functions

The group assisted persons discriminated against on the basis of sexual orientation and educated the public about the civil rights of gays and lesbians via a free newspaper, speakers bureau and telephone hotline. The group also offered safe-sex workshops and support for survivors who died of AIDS.

Two years ago, the City Assessor had denied its application based on a legal memorandum from the city's attorney that educational exemptions are limited to applicants who "conduct organized instructional programs, with a curriculum, classes and a faculty."

In rejecting an adminsitrative appeal, Justice Siracuse explained, the city changed its position and said "there was a distinction between education and advocacy."

The decision held the plaintiff had a clear right to the exemption under the RPTL provision, describing Rochester's reasons for refusing to grant it as "fallacious."

Rejecting the city's interpretation of a leading Court of Appeals ruling on the issue, Justice Siracuse decided that the scope of *Matter of Symphony Space,* 60 NY2d 33, qualified the GAGV for the exemption.

He quoted the Court of Appeals as stating that "the statute may encompass property used primarily for various and varied charitable and educational purposes and the moral or mental improvement of the citizenry."

Justice Siracuse concluded, "To the extent the Alliance is an advocacy group, as charged by the city, it advocates not homosexuality but the legitimate rights and needs of the gay and lesbian community, rights recognized by the city in its anti-discrimination ordinance. This is essentially an educational function."

The city was represented by Susan L. Hauser of the Corporation Counsel's office; the Gay Alliance by Ellen M. Yacknin of the National Lawyers' Guild.

Dissent Marks In Banc Denial

Continued from page 1, column 5

Judge Amalya L. Kearse, called the boost in the sentence given Mr. Frias for acquitted conduct an "extreme," "astronomical" and unintended result of U.S. Sentencing Commission policies. (*NYLJ,* Jan. 5, 1993).

Judge Kearse's ruling was joined by Second Circuit Judge Ellsworth A. Van Graafeiland. Judge Newman concurred separately.

Mr. Frias, who has not yet been resentenced, was convicted of two firearms violations and acquitted of a

man said the court has not fully addressed permissible uses of acquitted conduct.

"One of the bizarre aspects of the current Sentencing Guidelines regime is that a defendant can receive the same sentence whether he is convicted or acquitted," he wrote.

Avenues of Redress

With the denial of rehearing in banc, Judge Newman wrote that "only three avenues of redress remain." Those would be an appeal to the U.S.

Flyer Is Published On Jewish Funerals

A PRIVATE foundation has alerted estate attorneys to a flyer it has published explaining Jewish burial practices to overcome problems that can arise involving funeral requests of Jewish clients.

The Harry and Jane Fischel Foundation of Manhattan noted that some religious Jews have requested traditional Jewish funerals, but these instructions are often listed in wills not read until after a funeral.

The foundation's publication details Jewish funeral practices for the bene

LETTERS

To the Editor

Enough is Enough Of the War on Drugs

Welcome Judge Whitman Knapp as the most recent voice of reason adding to an ever broadening chorus of distinguished and prominent public figures to declare our nation's drug policy over the past decades, commonly known as the "War on Drugs," as both ineffectual and ill-fated. (*NYLJ,* March 26)

Citing the "utter futility" in presiding over ever burgeoning drug prosecutions and the "distortions to our Constitution" permitted in such drug prosecutions (and encouraged in a nation consumed by this domestic "war"), Judge Knapp brings home the more compelling truth, as previously quoted in these pages, "that the only apparent result of stepped-up enforcement efforts and tougher drug penalties has been increased drug use, violence and devastation in poor neighborhoods."

Over the past two decades the U.S. has seen the number of individuals incarcerated in its prisons triple, with the federal budget for drug policy — weighted toward arrests, prosecution and incarceration — growing exponentially at a rate almost tenfold during the decade of the '80s, currently consuming a federal budget of approximately $12 billion annually. In New York State, the number of individuals incarcerated for drug offenses rose 500 percent in only six years, from 1983-1989, while convictions for drug offenses currently represent 50 percent of all felony convictions handed down by our state courts, up from the 11.6 percent figure of 1980.

However, what is sadder still, and